

In the Office Action, the Examiner cites to Fig. 8a of Miller-Kovach as support for the rejection. However, Applicant notes that Fig. 8a and its associated description focus on calculating points values associated with a candidate food serving. That is, Fig. 8a provides a tool to calculate the point value associated with a particular food. In contrast, sub-paragraph “b” of claim 1 focuses on using a processor and a preset ratio to produce “a total number of the intake points the subject is allowed to consume during an intake period that is one or two digits long.”

Miller-Kovach mentions a daily allotment determination, but it is not associated with Fig. 8a. Instead, Miller-Kovach states in its Abstract, for instance, a range or maximum number of points allotted per day may be determined based on current body weight, caloric reduction to be achieved, physical activity level, and physical activity duration. Miller-Kovach states that the range of points allotted per day may be determined in accordance with the following table:

Current Body Weight	Range Of Points Allotted Per Day	
Less than 150 pounds	18-25	50
150 to 174 pounds	20-27	
175 to 199 pounds	22-29	
200 to 224 pounds	24-31	
225 to 250 pounds	26-33	
Over 250 pounds	28-35	55

Miller-Kovach explains in several locations that target daily points are entered by the user (see, e.g., col. 7, ll. 55 – col. 10, ll. 5). However, the determination of a given individual's total daily points is not a calculation in Miller-Kovach (no less is it a calculation using a preset ratio); rather it is a self-administered survey based accounting of factors such as age, physical activity level and gender.

The instant application focuses on sodium intake, not food intake. A daily points target or allotment of sodium is prescribed by a health care provider, it can be changed often, and it is based on patient reported symptoms such as ease of breathing, fatigue, ankle swelling, and dizziness for example as well as clinical factors such as blood pressure and “fluid weight.” Miller-Kovach does not using a processor and a preset ratio to produce “a total number of the

intake points the subject is allowed to consume during an intake period,” as required by subparagraph “b” of claim 1.

Moreover, the Examiner also states in the Office Action that it would be obvious to substitute sodium for the dietary parameters (e.g., calories, fat, fiber, sugar) tracked in Miller-Kovach. Applicant respectfully disagrees. Miller-Kovach teaches away from a points calculation of an independent dietary parameter, such as sodium.

Miller-Kovach addresses an individual's general overall health relative to “fat weight.” This “fat” weight is a result of fat, fiber, and caloric intake modified by a range of physical activity. Miller-Kovach discloses at least two different algorithms (equations) for calculating points measured for such “fat weight,” which are copied below.

$$p = \frac{c}{k_1} + \frac{f}{k_2} \qquad p = \frac{c}{k_1} + \frac{f}{k_2} - \frac{r}{k_3}$$

“P” is the calculated points; “c” is calories associated with a particular food item; “f” typically represents fat content; “r” represents dietary fiber content; and k_1 , k_2 , and k_3 are constants. Under a “fat weight” system such as Miller-Kovach, all the variables are interdependent. A change in one variable (e.g., fat) typically increases or decreases the value of another variable (e.g., calories).

The method of the instant application focuses on “fluid” weight strictly as a result of sodium intake. Sodium is a specific nutrient which, when over-consumed, has a direct impact on specific treatable medical issues such as heart disease, kidney disease, high blood pressure and many other acute and chronic health conditions. Daily “fluid” weight measures and alterations of daily targets have an immediate impact on the treatment and control of such “fluid weight” as well as on the specific medical issue being addressed. Physical activity as a modifier of sodium intake has a negligible impact on “fluid weight.” Further, “fluid weight” rises and falls at a faster rate than does “fat weight.” As a result, sodium as a trackable nutrient, must be measured independently.

Miller-Kovach, as noted by the algorithms copied above, teaches away from a points calculation of an independent parameters, such as sodium. Simply inserting sodium into the Miller-Kovach ratio calculation is tantamount to adding “zero” since sodium does not have an

interdependency with the other nutrients nor with physical activity included in the their calculation. Thus their points system would never reflect an impact as a result of adding sodium to the formula calculation. The claimed method uses a range of sodium milligrams per point to directly isolate and measure sodium as an independent effect on fluid weight. Depending on the individual's resultant fluid weight, the prescribed sodium intake (e.g., daily intake) target for the individual may be changed and the claimed method may be used to help an individual maintain a healthy amount of fluid weight. Accordingly, if sodium were used in Miller-Kovach's points algorithm (where nutrients are measured relative to other nutrients and physical activity measured), the calculation would be invalid. In short, a claimed sodium-based point is not the same as nor can ever be the same as a Miller-Kovach point, nor can be included in Miller-Kovach's calculation.

The Examiner also cites to Cosentino to support the rejection under §103. Applicant submits that Cosentino does not resolve the shortcomings of Miller-Kovach provided above. Cosentino focuses on combining information from an implanted device with information from a patient monitoring apparatus, not on a method for using points to track sodium intake. Accordingly, any rejection of the pending claims based Miller-Kovach in light of Cosentino should be withdrawn.

It is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested. The Examiner is invited to telephone the undersigned in the event there are any questions concerning the election or if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

Dated: June 28, 2010

/Charles D. Segelbaum/
Charles D. Segelbaum
Reg. No. 42,138
(612) 492-7115

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425 USA
Telephone: (612) 492-7000
Facsimile: (612) 492-7077
4686202_1.DOC